

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT**
Senator Curren D. Price, Jr., Chair

Bill No: SB 1172 Author: Lieu
As Amended: April 16, 2012 Fiscal: No

SUBJECT: Healing arts: sexual orientation change efforts.

SUMMARY: Prohibits psychotherapists from providing sexual orientation change efforts (SOCE) without the informed consent of adult patients, and allows a cause of action to be pursued by patients or former patients against a psychotherapist.

Existing law:

- 1) Existing law provides for licensing and regulation of various professions in the healing arts, who utilize psychotherapeutic techniques, including physicians and surgeons with a psychiatric specialty, licensed clinical psychologists, licensed marriage and family therapists (LMFTs), licensed clinical social workers (LCSWs) and licensed professional clinical counselors (LPCCs). (BPC § 2099, § 2928, § 2940, § 4980.40.5, and § 4996.2)
- 2) Defines psychotherapy, as practiced by licensed clinical psychologists, as the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually or socially ineffectual or maladjustive. (BPC § 2903)
- 3) Defines psychotherapy, as practiced by LCSWs, as the psychosocial methods within a professional relationship to assist the person or person to achieve a better psychosocial adaptation to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. (BPC 4996.9)
- 4) Defines counseling interventions and psychotherapeutic techniques as the application of cognitive affective, verbal or nonverbal, systemic or holistic counseling strategies that include principles of development, wellness and maladjustment that reflect a pluralistic society. (BPC § 4999.20 (b))
- 5) Indicates that these interventions and techniques should be specifically implemented in the context of a professional clinical counseling relationship and use a variety of counseling theories and approaches. (BPC § 4999.20 (b))
- 6) Permits MFTs to use applied psychotherapeutic techniques to enable individuals to mature and grow within marriage and the family. (BPC § 4980.2)

- 7) Permits LPCCs to apply counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental and emotional issues including personal growth, adjustment to disability, crisis intervention and psychosocial and environmental problems. (BPC § 4999.20 (b))

This bill:

- 1) Makes the following findings and declarations:
 - a) An individual's sexual orientation, whether homosexual, bisexual, or heterosexual, is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.
 - b) Sexual orientation change efforts (SOCE) pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources. This is documented by the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation in its 2009 Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation.
 - c) Recognizing that there is no evidence that any type of psychotherapy can change a person's sexual orientation and that sexual orientation change efforts may cause serious and lasting harms, the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the National Association of Social Workers, and the American Academy of Pediatrics uniformly oppose efforts to change the sexual orientation of any individual.
 - d) Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlyn Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346.
 - e) California has a compelling interest in protecting the lives and health of lesbian, gay, and bisexual people.
- 2) Defines "informed consent" as consent that is voluntarily provided in writing by a patient to a psychotherapist with whom the patient has a therapeutic relationship. The informed consent must explicitly manifest the patient's agreement to sexual orientation change efforts and

include a statement as specified. Consent that is provided as a result of therapeutic deception or duress or coercion is not informed consent.

- 3) Defines "psychotherapist" as a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a psychiatric technician, a marriage and family therapist, a registered marriage and family therapist, intern, or trainee, an educational psychologist, a licensed clinical social worker, an associate clinical social worker, a licensed professional clinical counselor, or a registered clinical counselor, intern, or trainee.
- 4) Defines "psychotherapy" as the professional assessment, evaluation, treatment, or counseling of a mental or emotional illness, symptom, or condition by a psychotherapist.
- 5) Defines "sexual orientation change efforts" as psychotherapy aimed at altering the sexual or romantic desires, attractions, or conduct of a person toward people of the same sex so that the desire, attraction, or conduct is eliminated or reduced or might instead be directed toward people of a different sex. It does not include psychotherapy aimed at altering sexual desires, attractions, or conduct toward minors or relatives or regarding sexual activity with another person without that person's consent.
- 6) Defines "therapeutic deception" a representation by a psychotherapist that sexual orientation change efforts are endorsed by leading medical and mental health associations or that they can or will reduce or eliminate a person's sexual or romantic desires, attractions, or conduct toward another person of the same sex.
- 7) Defines "therapeutic relationship" as the relationship that exists during the time the patient receives psychotherapy.
- 8) Prohibits a psychotherapist, as defined, from performing sexual orientation change efforts in the absence of informed consent of the adult patient.
- 9) Requires that to obtain informed consent, a treating psychotherapist shall provide a patient with a form to be signed by the patient that provides informed consent and that the form shall contain a statement as specified.
- 10) Specifies that under no circumstances shall a patient under 18 years of age undergo sexual orientation change efforts, regardless of the willingness of a patient's parent, guardian, conservator, or other person to authorize such efforts.
- 11) Specifies that the right to refuse sexual orientation change efforts is not waived by giving informed consent and that consent may be withdrawn at any time prior to, during, or between sessions of sexual orientation change efforts and that any act of duress or coercion by any person or facility shall invalidate the patient's consent to sexual orientation change efforts.
- 12) Provides that a cause of action may be brought against a psychotherapists by a patient , former patient, or others as specified if the sexual orientation change efforts were conducted without first obtaining informed consent or by means of therapeutic deception, or if the sexual orientation change efforts were conducted on a patient who was under 18 years of age at any point during the use of the sexual orientation change efforts.

13) Specifies those bringing the cause of action may recover actual damages, or statutory damages in the amount of \$5,000, whichever is greater, in addition to cost and reasonable attorney's fees.

14) Specifies the time for which commencement of the action may be brought.

FISCAL EFFECT: None. This bill has been keyed "non-fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** Equality California is the Sponsor of the bill. According to the Author, the intent of the bill is to limit deceptive therapies that are harmful to minors by mental health providers. The bill seeks to provide awareness of the alternatives to and the potential harmful effects of sexual orientation change therapies while also protecting children from these treatments. The Author states "...this so-called reparative therapy, conversion therapy or reorientation therapy is scientifically ineffective and has resulted in much harm." This bill seeks to provide protections for LGBT youth by preventing these types of therapies that are potentially dangerous as well as making adults aware of the potential harms associated with sexual orientation change therapies.
2. **The Practice of Psychotherapy.** Psychotherapy is a general term referring to therapeutic interaction or treatment contracted between a trained professional and a client or patient; family, couple or group. Psychotherapy includes the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually or social ineffectual or maladjustive. (BPC § 2903)

Across the United States, psychotherapy may be performed by practitioners with a number of different qualifications, including psychiatrists, clinical psychologists, counseling psychologists, clinical or psychiatric social workers, mental health counselors, marriage and family therapist, rehabilitation counselors, school counselors and psychiatric nurses among others. Requirements of these professions vary, but often entail graduate school and supervised clinical experience.

In the State of California, only the following professionals are licensed and regulated under the Board of Psychology, Board of Behavioral Sciences and Medical Board to provide psychotherapy, among other services, to patients:

- a. Board Certified Psychiatrists (MDs or DOs with specific training in psychotherapy and psychopharmacology,)
- b. Licensed Clinical Psychologists (LCPs)
- c. Licensed Clinical Social Workers (LCSWs)
- d. Licensed Marriage and Family Therapists (LMFTs)
- e. Licensed Professional Clinical Counselors (LPCCs)

3. **History of Homosexuality and the American Psychiatric Association (APA).** A number of research studies on homosexuality conducted in the 1940's and 1950's, combined with protests during the civil rights movement of the 1960's and 1970's led to the reformation of how homosexuality was classified by mental health and medical associations such as the APA and the APA removed homosexuality from its official Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973.

Prior to the civil rights movement, the medical view of homosexuality was that it was a mental disorder and disease. There were a series of resulting encounters between activists and psychiatrists at the annual meetings of the APA between 1970 and 1972 where gay activists challenged the APA. As a result, the diagnosis of homosexuality was deleted from the DSM-II.

The APA did not initially embrace this change. In recognition of those who opposed deleting the classification, the APA made a compromise. The DSM-II diagnosis of Sexual Orientation Disturbance (SOD) replaced homosexuality. Accordingly, individuals comfortable with their homosexuality were no longer classified as having a mental disorder. Instead, only those who were "in conflict with" their sexual orientation were classified as having a mental disorder. However, this change engendered continued controversy. Those opposing the diagnosis argued that there were no reported cases of unhappy heterosexual individuals seeking treatment to become homosexual. This problem was addressed in the 1980s DSM-III where SOD was replaced by ego-dystonic homosexuality (EDH).

In the mid 1980's during the revision of the DSM-III, the diagnosis of EDH also engendered controversy. Those on the APA Advisory Committee working on the revision who desired to retain the EDH diagnosis argued that they believed the diagnosis was clinically useful and that it was necessary for research and statistical purposes. The opponents noted that making a patient's subjective experience of their own homosexuality the determining factor of their illness was not consistent with the new evidence-based approach that psychiatry had embraced. They argued that empirical data did not support the diagnosis and that it was inappropriate to label culturally induced homophobia as a mental disorder. The APA Committee agreed with the opponents and the diagnosis of ego-dystonic homosexuality was removed from DSM-III-R in 1987.

4. **History of Homosexuality and the World Health Organization (WHO).** In 1992, the WHO removed the diagnosis of homosexuality as a mental disorder from the International Classification of Disorders-10 (ICD-10). Similar to the DSM, the ICD-10 is a classification system for medical and mental disorders used internationally. The WHO replaced homosexuality with the diagnosis of ego-dystonic sexual orientation which falls under the category of: "Psychological and behavioural disorders associated with sexual development and orientation". The ICD-10 ego-dystonic sexual orientation diagnosis is defined as:

"The gender identity or sexual preference (heterosexual, homosexual, bisexual, or pre-pubertal) is not in doubt, but the individual wishes it were different because of associated psychological and behavioural disorders, and may seek treatment in order to change it."

The WHO also notes: *"Sexual orientation by itself is not to be regarded as a disorder... it is often a result of unfavorable and intolerant attitudes of the society or a conflict between sexual urges and religious belief systems."*

5. **Sexual Orientation Change Therapy (SOCE).** SOCE, sometimes called reparative therapy, conversion therapy, or reorientation therapy, is an attempt to change the sexual orientation of a person from homosexual or bisexual to heterosexual. According to the American Psychiatric Association, conversion therapy is a type of psychiatric treatment “based upon the assumption that homosexuality is a mental disorder or based upon the a priori assumption that a patient should change his/her homosexual orientation.”

Joseph Nicolosi, one of the founders of modern reparative therapy, promotes psychoanalytic theories suggesting that homosexuality is a form of arrested psychosexual development, resulting from “an incomplete bond and resultant identification with the same-sex parent, which is then symbolically repaired in psychotherapy.” Nicolosi’s intervention plans involve conditioning a man to a traditional masculine gender role via participation in sports activities, avoidance of the other sex unless for romantic contact, avoiding contact with homosexuals, increasing time spent with heterosexuals, engaging in group therapy, marrying a person of the opposite sex and fathering children.

Others, particularly conservative Christian transformational ministries, use the term conversion therapy to refer to the utilization of prayer, religious conversion, individual and group counseling to change a person's sexual orientation.

The federal Ninth Circuit Court of Appeals addressed the issue of sexual orientation therapy in the context of an asylum application. The court held that a Russian citizen who was subjected to sexual orientation change treatments that included sedative drugs and hypnosis “constituted mental and physical torture.” *Pitcherskaia v INS* 118 F.3d 641 (9th Cir. 1997)

6. **National Association for Research and Therapy of Homosexuality (NARTH).** NARTH is a group of psychologists and analysts that views homosexuality as a dysfunction that can be corrected. In their January 2012 Statement on Orientation Change they write:

“Those who are highly pessimistic regarding change in sexual orientation appear to have assumed a categorical view of change, which is neither in keeping with how sexual orientation has been defined in the literature nor with how change is conceptualized for nearly all other psychological challenges. NARTH believes that viewing change as occurring on a continuum is a preferable therapeutic approach and more likely to create realistic expectancies among consumers of change-oriented intervention. With this in mind, NARTH remains committed to protecting the rights of clients with unwanted same-sex attractions to pursue change as well as the rights of clinicians to provide such psychological care.”

7. **Positions of Mental Health Associations.** Several national mental health associations have commented on the use of sexual orientation change efforts including reparative therapy, conversion therapy and reorientation therapy.

- a. The American Psychological Association, in its 1997 Resolution on Appropriate Therapeutic Responses to Sexual Orientation states:

“We oppose portrayals of lesbian, gay and bisexual youth and adults as mentally ill due to their sexual orientation and support the dissemination of accurate information about sexual orientation and mental health and appropriate interventions in order to

counteract bias that is based in ignorance of unfounded beliefs about sexual orientation."

The American Psychological Association also convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts. They concluded: *"Efforts to change sexual orientation are unlikely to be successful and involves some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates."*

It should also be noted that the American Psychological Association included an article that investigated and promoted the use of conversion therapies in its June 2002 issue of the *Professional Psychology: Research and Practice* peer-reviewed journal.

- b. The American Psychiatric Association published a position statement in March of 2000. In it they state:

"The American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation."

- c. The American School Counselor Association's position statement on professional school counselors and LGBT and Questioning (LGBTQ) youth states:

"It is not the role of the professional school counselor to attempt to change a student's sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation into an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ student to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources."

- d. The American Academy of Pediatrics published an article in the *Pediatrics* journal in 1993. They state:

"Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."

- e. The American Medical Association's Council on Scientific Affairs prepared a report in 1994. In it they state:

"Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through

psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it."

- f. The National Association of Social Workers prepared a 1997 policy statement in which they state:

"Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful."

- g. Just The Facts Coalition (Coalition). In 2006, a coalition of education, health and mental health organizations, under the leadership of the director of advocacy of the Gay, Lesbian, and Straight Education Network (GLSEN), developed a resource aid for school officials regarding sexual orientation development in youth and reparative and sexual orientation conversion therapy. The resource was created in response to an "upsurge" in promotion of efforts to change sexual orientation through therapy and religious ministries and the "demand" that these perspectives on homosexuality be taught in schools. The Coalition clarified that homosexuality is not a mental disorder and that the emergence of same-sex attraction and orientation is not abnormal or mentally unhealthy. The Coalition includes the following organizations:

- i. American Academy of Pediatrics
- ii. American Association of School Administrators
- iii. American Counseling Association
- iv. American Federation of Teachers
- v. American Psychological Association
- vi. American School Counselor Association
- vii. American School Health Association
- viii. Interfaith Alliance
- ix. National Association of School Psychologists
- x. National Association of Secondary School Principals
- xi. National Association of Social Workers
- xii. National Education Association
- xiii. School Social Work Association of America

8. **Informed Consent.** This bill would require that the following statement appear on the informed consent form of any psychotherapist who elects to provide sexual orientation change therapeutic techniques with a client:

"Having a lesbian, gay or bisexual sexual orientation is not a mental disorder. There is no scientific evidence that any type of therapies are effective in changing a person's sexual orientation. Sexual orientation change therapies can be harmful. The risks include but are not limited to depression, anxiety, and self-destructive behavior. Medical and Mental Health Organizations that oppose the use of sexual orientation change therapies include the American Medical Association, the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, the American

Counseling Association, the American Association for Marriage and Family Therapy, and the American Academy of Pediatrics."

The right to refuse sexual orientation change efforts is not waived by giving informed consent and that consent may be withdrawn at any time prior to, during or between sessions of sexual orientation change efforts. Further, any act of duress or coercion by any person or facility shall invalidate the patient's consent to sexual orientation change efforts.

9. **Cause of Action.** This bill allows a cause of action to be brought against a psychotherapist by a patient, former patient or former patient's descendant if the sexual orientation change efforts were conducted without first obtaining written informed consent or by means of therapeutic deception, or if the sexual orientation change efforts were conducted on a patient who was under 18 years of age at any point during the use of the sexual orientation change efforts.

The patient, former patient or former patient's descendant may recover actual damages or statutory damages in the amount of \$5,000.00, whichever is greater, in addition to costs and reasonable attorney fees.

The time for commencement of the action shall be within eight years of the date the patient or former patient attains the age of majority or within five years of the date the patient, former patient or former patient's descendant discovers or reasonably should have discovered that the patient was subjected to sexual orientation change efforts in violation of the law.

A patient, former patient or former patient's descendant will not be precluded from the right to bring a civil action against a psychotherapist arising from other legal claims.

10. **Arguments in Support.** Equality California (Sponsor) indicates that this bill will help to curb questionable practices "known to produce lifelong damage to those who are subjected to them." They assert "SOCE poses critical health risks to LGBT people including depression, shame, decreased self-esteem, social withdrawal, substance-abuse, risky behavior and suicidality." They also believe that minors who experience family rejection based on their sexual orientations face especially serious health risks.
11. **Arguments in Opposition.** The California Psychological Association (CPA) opposes this bill unless it is amended. Specifically, they state that the professional guilds have researched the efficacy and purpose of SOCE and have passed resolutions based on that data and research. They go on to state "*Each profession has a national organization with a prescribed Code of Ethics, as well as state organizations and licensing boards to which they report and weigh in on professional and ethical conduct. The statutory ban on types of therapy is not the right venue and there is very little precedent in state law to make an outright ban on a specific type of therapy.*" The CPA believes that this bill would micromanage the work of individual therapists. The CPA is willing to support the bill if it removes the outright ban on SOCE for minors and if the informed consent form is simplified.

In a letter jointly authored by the California Psychological Association, California Association for Licensed Professional Clinical Counselors, California Psychiatric Association and California Association of Marriage and Family Therapists, the organizations state their intent to oppose the bill unless it is amended. Specifically, they cite a number of technical wording

changes that should occur to ensure that the facts about the definition, history and the professional associations' positions on SOCE are accurate. They indicate that they have general concerns about what is included in the sample informed consent language. They also indicate that they are "...troubled by the complete ban on SOCE treatment for minors, especially in the situation wherein the minor legally consents to his/her own treatment free of parental or guardian influence."

12. **Suggested Author's Amendments.** The Author should consider removing a psychiatric technician under those defined as a "psychotherapist" since it does not appear as if a psychiatric technician is permitted within their scope of practice to provide psychotherapy.

NOTE: *Double-referral to Judiciary Committee, second.*

SUPPORT AND OPPOSITION:

Support:

Equality California (Sponsor)

Opposition: (Oppose Unless Amended)

California Psychological Association
California Association for Licensed Professional Clinical Counselors
California Psychiatric Association
California Association of Marriage and Family Therapists

Consultant: Le Ondra Clark